

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
Manirou Mbaye (AKA Mounir Mbaye) and Issatu Diallo :
as mother and natural guardian to M [REDACTED] D [REDACTED], an
infant under eighteen (18) years of age. :

Plaintiffs, :

-against- :

VERIFIED COMPLAINT

City of New York, New York City Police Department and
New York City Police Officer Harry Pell, shield 7048 of :
the 44 police precinct, :

Defendants.

-----X
Plaintiff, by and through his attorney, JASON A. STEINBERGER, Esq, for his complaint,
alleges upon information and belief as follows:

STATEMENT OF FACTS

1. That at all times hereinafter mentioned, Plaintiff Manirou Mbaye, (AKA Mounir Mbaye), (hereinafter referred to as "MBAYE") resides in Bronx County, State of New York.
2. That at all times hereinafter mentioned, Plaintiff M [REDACTED] D [REDACTED] (hereinafter referred to as "D [REDACTED]") resides in Bronx County, State of New York.
3. That at all times hereinafter mentioned, Police Officer Harry Pell, shield 7048 of the 44 police precinct (hereinafter referred to as "PELL") was employed by the New York City Police Department.

4. That at all times hereinafter mentioned, the police officers involved in the arrest of Plaintiffs (hereinafter referred to as "POLICE OFFICERS) were employed by the New York City Police Department.

5. That at all times hereinafter mentioned, Defendant City of New York, is a municipal corporation organized and existing under the laws of the State of New York, with a principal place of business located at 1 Centre Street, County of New York State of New York.

6. That at all times hereinafter mentioned, Defendant New York City Police Department, is an agency created and maintained by the above municipal government.

7. On or before about October 10, 2012 notice required by Municipal Law 50-E was given to City of New York, by personal service. Said notice set forth the facts underlying Plaintiffs' claim against the City of New York, and its agents and employees. To date, no answer has been received by Plaintiff and no compensation has been offered by the City of New York.

8. On or about May 21, 2012 a hearing required by Municipal Law 50-H was conducted. At said hearing, Plaintiffs testified and set forth the facts underlying Plaintiffs' claim against the City of New York and its agents and employees. To date, no answer has been received by Plaintiff and no compensation has been offered by the City of New York in response to this claim, and more than thirty (30) days have elapsed.

9. That on or about July 12, 2012 at approximately 9:30PM in the vicinity of East 167 Street and Grand Concourse Plaintiff were walking from MacDonald's towards their respective homes, when PELL and POLICE OFFICERS yelled towards them in an effort to get their attention.

10. That MBAYE immediately dropped to his knees and was tackled to the ground by multiple POLICE OFFICERS.

11. That after being tackled to the ground, MBAYL was kicked to his mid-section by multiple POLICE OFFICERS to his ribs.

12. That [REDACTED] was grabbed by POLICE OFFICERS, ripping his shirt and tackling him to the ground.

13. That both Plaintiffs were arrested and handcuffed.

14. That prior to being arrested, neither Plaintiff had engaged in any unlawful conduct.

15. That prior to being arrested, neither Plaintiff was in possession of any illegal substance.

16. That at no time prior to their arrest, had anyone identified either Plaintiff as having committed any crime.

17. That at no time after Plaintiffs were arrested, had anyone identified them as having committed a crime.

18. That after being arrested, Plaintiffs were transported to the 44 police precinct.

19. That while Plaintiffs were being transported to the 44 precinct, MBAYE was instructed to remove his shoes and socks. That when MBAYE questioned why he needed to remove his socks, POLICE OFFICERS punched him in his face and body.

20. That when Plaintiff arrived at the 44 precinct they were each placed into a cell.

21. That while MBAYE was inside of a cell at the 44 precinct, he was instructed to remove his shoes and socks. That when MBAYE questioned why he needed to remove his socks, POLICE OFFICERS punched him in his face and body.

22. That at no time while MBAYE was held at the 44 precinct was he given medical attention.

23. That after being held in cells in the 44 precinct, Plaintiffs were removed to Bronx Central booking located at 215 East 161 Street, Bronx, New York.

24. That while at Bronx Central Booking, Plaintiffs were held in a cell with other males for several hours.

25. That while at Bronx Central Booking, Plaintiffs were subjected to harassment from the other male prisoners.

26. That while at Bronx Central Booking, Plaintiffs were denied access to a working bathroom.

27. That on July 14, 2012, MBAYE appeared in Bronx County Criminal Court where he was arraigned on docket number 2012BX0040195 charging Robbery in the Second Degree, Penal Law section 160.10(2)(a), a class C felony and related charges.

28. At MBAYE's arraignment, he was released on his own recognizance and the case adjourned.

29. That MBAYE made numerous court appearances from the date of his release until September 9, 2012 when his case was dismissed.

30. That on July 14, 2012, [REDACTED] appeared in Bronx County Criminal Court where he was arraigned on docket number 2012BX0040196 charging Robbery in the Second Degree, Penal Law section 160.10(2)(a), a class C felony and related charges.

31. At [REDACTED]'s arraignment, he was released on his own recognizance and the case adjourned.

32. That [REDACTED] made numerous court appearances from the date of his release until September 9, 2012 when his case was dismissed.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST THE CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT**

33. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 32, as if more fully stated herein at length.

34. That Defendants, PELL and POLICE OFFICERS acted with actual malice toward Plaintiff MBAYE and with willful and wanton indifference to and deliberate disregard for the statutory and constitutional rights of the Plaintiff.

35. That the actions of the Defendants, PELL and POLICE OFFICERS constituted unreasonable deprivation of liberty without due process of law.

36. That as a result of the actions by Defendants, PELL and POLICE OFFICERS was traumatized and fears for her physical safety when she sees and encounters members of the New York City Police Department from that day and onward.

37. That as a result of the actions of Defendants, PELL and POLICE OFFICERS, [REDACTED] was seriously injured due to the intentional manner in which Defendants, their agents, servants, employees and/or licensees treated MBAYE and that MBAYE was wounded, suffered, still suffers, and will continue to suffer for some time great physical pain and great bodily injuries and became sick, sore, lame and disabled and so remained for a considerable length of time.

38. That as a result of the Defendants, PELL and POLICE OFFICERS' actions, MBAYE has been unable to sleep.

39. That as a result of the Defendants, PELL and POLICE OFFICERS' actions, MBAYE was forced to miss multiple days of school and tests.

40. That as a result of the Defendants, PELL and POLICE OFFICERS' actions MBAYE sustained damage to his person in the sum within the jurisdiction of the Supreme Court and in excess of all inferior courts.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST CITY OF NEW YORK AND
NEW YORK CITY POLICE DEPARTMENT

41. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 40, as if more fully stated herein at length.

42. The intentional verbal abuse, false arrest and false imprisonment by Defendants, PELL and POLICE OFFICERS violated the rights of MBAYE as guaranteed by the Fourth, Fifth and Eighth Amendments to the United States Constitution, as well as the corresponding sections of the New York State Constitution, for which Defendants are individually liable.

43. Defendants, PELL and POLICE OFFICERS having no lawful authority to arrest MBAYE did, nevertheless, unlawfully arrest MBAYE with actual malice toward her and with willful and wanton indifference to and deliberate disregard for her constitutional rights. Thus Plaintiff MBAYE is entitled to both compensatory and exemplary damages.

AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST THE CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

44. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 43, as if more fully stated herein at length.

45. Defendants, PELL and POLICE OFFICERS conspired to violate MBAYE's statutory civil rights in violation of 42 U.S.C. sec.1983, et al as well as the corresponding sections of the New York State Constitution, for which Defendants are individually liable. Thus Plaintiff MBAYE is entitled to both compensatory and exemplary damages, as well as attorney's fees.

AS AND FOR A FOURTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK AND
NEW YORK CITY POLICE DEPARTMENT

46. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 45, as if more fully stated herein at length.

47. Plaintiff MBAYE was verbally abused, falsely arrested and falsely imprisoned by Defendants, PELL and POLICE OFFICERS in a manner that was extreme, outrageous and unjustified and caused MBAYE to suffer physical and severe emotional distress for which the Defendants, PELL and POLICE OFFICERS are individually liable. The verbal abuse, false arrest and false imprisonment on and of Plaintiff MBAYE by Defendants were unjustified and done with actual malice and wanton indifference to and deliberate disregard for human life and the rights of Plaintiff MBAYE. MBAYE is thus entitled to compensatory and exemplary damages.

AS AND FOR A FIFTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK AND
NEW YORK CITY POLICE DEPARTMENT

48. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 47, as if more fully stated herein at length.

49. At all times pertinent hereto, PELL and POLICE OFFICERS were acting within the scope of their employment as officers of the New York City Police Department and City of New York.

50. The City of New York and New York City Police Department are each liable for compensatory damages under the doctrine of respondeat superior for the intentional torts that PELL and POLICE OFFICERS committed within the scope of his employment.

AS AND FOR A SIXTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK AND
NEW YORK CITY POLICE DEPARTMENT

51. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 50, as if more fully stated herein at length.

52. The City of New York and New York City Police Department's failure to provide adequate training and supervision to its police officers constitutes a willful and wanton indifference and deliberate disregard for human life and the rights of private citizens, including Plaintiff MBAYE. Plaintiff MBAYE is thus entitled to compensatory exemplary damages.

AS AND FOR A SEVENTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

53. Plaintiff repeats, reiterates and realleges the allegations contained in paragraphs 1 through 52, as if more fully stated herein at length.

54. Upon information and belief, the City of New York and New York City Police Department maintained a system of review of police conduct which was so untimely and cursory that it was ineffective and permitted and tolerated the unreasonable detention of Plaintiff MBAYE.

55. Upon information and belief, the City of New York and New York City Police Department maintained a system of review of police conduct which was so untimely and cursory that it was ineffective and permitted the wanton indifference to and deliberate disregard for the statutory and constitutional rights of Plaintiff MBAYE.

AS AND FOR AN EIGHTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK AND
NEW YORK CITY POLICE DEPARTMENT

56. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 55 as if more fully stated herein at length.

57. That Defendants, PELL and POLICE OFFICERS acted with actual malice toward [REDACTED] and with willful and wanton indifference to and deliberate disregard for the statutory and constitutional rights of [REDACTED]

58. That the actions of the Defendants, PELL and POLICE OFFICERS constituted unreasonable deprivation of liberty without due process of law.

59. That as a result of the actions by Defendants, PELL and POLICE OFFICERS, [REDACTED] was traumatized and fears for his physical safety when he sees and encounter members of the New York City Police Department from that day and onward.

60. That as a result of the Defendants, PELL and POLICE OFFICERS' actions, [REDACTED] has been unable to sleep.

61. That as a result of the Defendants, PELL and POLICE OFFICERS' actions, [REDACTED] was forced to miss multiple days of school.

62. That as a result of the Defendants, PELL and POLICE OFFICERS' actions [REDACTED] sustained damage to his person in the sum within the jurisdiction of the Supreme Court and in excess of all inferior courts.

AS AND FOR A NINTH CAUSE OF ACTION AGAINST CITY OF NEW YORK AND NEW
YORK CITY POLICE DEPARTMENT

63. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 62, as if more fully stated herein at length.

64. The intentional verbal abuse, false arrest and false imprisonment by Defendants violated the rights of Plaintiff [REDACTED] as guaranteed by the Fourth, Fifth and Eighth Amendments to the Unites States Constitution, as well as the corresponding sections of the New York State Constitution, for which Defendants are individually liable.

65. Defendants, PELL and POLICE OFFICERS, having no lawful authority to arrest [REDACTED] did, nevertheless, unlawfully arrest [REDACTED] with actual malice toward him and with willful and wanton indifference to and deliberate disregard for his constitutional rights. Thus Plaintiff [REDACTED] is entitled to both compensatory and exemplary damages.

AS AND FOR A TENTH CAUSE OF ACTION AS AGAINST THE CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

66. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 65, as if more fully stated herein at length.

67. Defendants conspired to violate [REDACTED]'s statutory civil rights in violation of 42 U.S.C. sec.1983, et al as well as the corresponding sections of the New York State Constitution, for which Defendants are individually liable. Thus Plaintiff [REDACTED] is entitled to both compensatory and exemplary damages, as well as attorney's fees.

AS AND FOR A ELEVENTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

68. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 67, as if more fully stated herein at length.

69. Plaintiff was verbally abused, falsely arrested and falsely imprisoned by Defendants in a manner that was extreme, outrageous and unjustified and caused Plaintiff [REDACTED] to suffer physical and severe emotional distress for which the Defendants, PELL and POLICE OFFICERS are individually liable. The verbal abuse, false arrest and false imprisonment on and of [REDACTED] by Defendants was unjustified and done with actual malice and wanton indifference to and

deliberate disregard for human life and the rights of [REDACTED]. Plaintiff [REDACTED] is thus entitled to compensatory and exemplary damages.

AS AND FOR A TWELFTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

70. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 69, as if more fully stated herein at length.

71. At all times pertinent hereto, PELL and POLICE OFFICERS were acting within the scope of their employment as officers of the New York City Police Department and City of New York.

72. The City of New York and New York City Police Department are each liable for compensatory damages under the doctrine of respondeat superior for the intentional torts that PELL and POLICE OFFICERS committed within the scope of his employment.

AS AND FOR A THIRTEENTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

73. Plaintiffs repeats, reiterates and realleges the allegations contained in paragraphs 1 through 72, as if more fully stated herein at length.

74. The City of New York and New York City Police Department's failure to provide adequate training and supervision to its police officers constitutes a willful and wanton indifference and deliberate disregard for human life and the rights of private citizens, including Plaintiff [REDACTED]. Plaintiff [REDACTED] is thus entitled to compensatory exemplary damages.

AS AND FOR A FOURTEENTH CAUSE OF ACTION AS AGAINST CITY OF NEW YORK
AND NEW YORK CITY POLICE DEPARTMENT

75. Plaintiff repeats, reiterates and realleges the allegations contained in paragraphs 1 through 74, as if more fully stated herein at length.

76. Upon information and belief, the City of New York and New York City Police Department maintained a system of review of police conduct which was so untimely and cursory that it was ineffective and permitted and tolerated the unreasonable detention of Plaintiff

77. Upon information and belief, the City of New York and New York City Police Department maintained a system of review of police conduct which was so untimely and cursory that it was ineffective and permitted the wanton indifference to and deliberate disregard for the statutory and constitutional rights of Plaintiff

WHEREFORE, Plaintiffs each demand judgment against the Defendants as follows:

On the first cause of action, a sum within the jurisdiction of this Court and in excess of all inferior courts;

On the second cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts, together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts owing to the willful and wanton nature of Defendants actions.

On the third cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts owing to the willful and wanton nature of Defendants actions.

On the fourth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts owing to the Defendants' wanton and willful actions;

On the fifth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts

On the sixth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts.

On the seventh cause of action, a sum within the jurisdiction of this Court and in excess of all inferior courts.

On the eighth cause of action, a sum within the jurisdiction of this Court and in excess of all inferior courts;

On the ninth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts, together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts owing to the Defendants' wanton and willful actions;

On the tenth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts owing to the Defendants' wanton and willful actions;

On the eleventh cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts together with the additional exemplary sum within the jurisdiction of

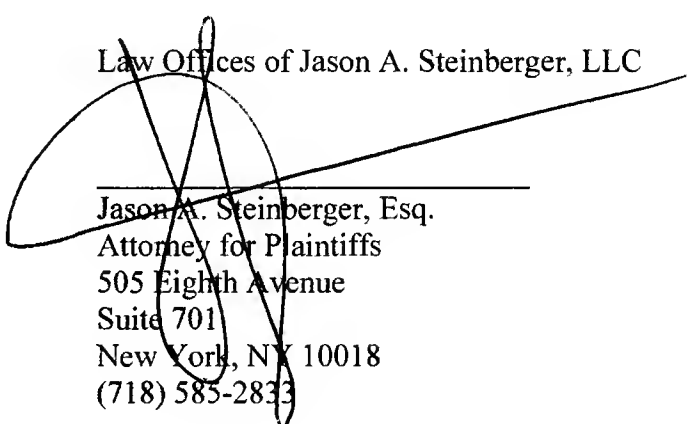
this court and in excess of all inferior courts owing to the Defendants' wanton and willful actions;

On the twelfth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts

On the thirteenth cause of action, a sum within the jurisdiction of the of this Court and in excess of all inferior courts together with the additional exemplary sum within the jurisdiction of this court and in excess of all inferior courts.

On the fourteenth cause of action, a sum within the jurisdiction of this Court and in excess of all inferior courts.

Law Offices of Jason A. Steinberger, LLC

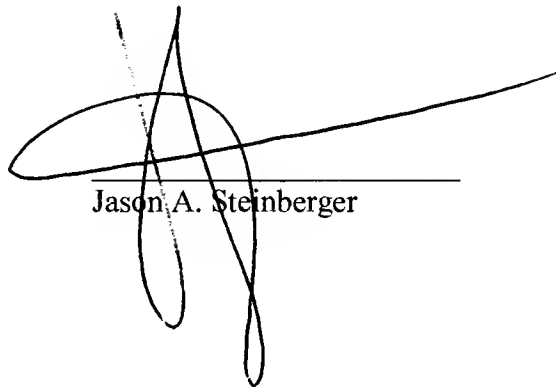


Jason A. Steinberger, Esq.
Attorney for Plaintiffs
505 Eighth Avenue
Suite 701
New York, NY 10018
(718) 585-2833

STATE OF NEW YORK: COUNTY OF BRONX

The undersigned, an attorney admitted to practice in the State of New York, under penalties of perjury, affirms the following to be true: Affirmant has read the foregoing Complaint and the contents thereof ; the same is true to affirmant's own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters affirmant believes it to be true; and the reason this verification is made by affirmant and not by the plaintiff is because the plaintiff is not within the county in which your affirmant maintains his principal office. The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are communications with the plaintiff, review of records and documents within affirmant's possession.

Affirmed: October 2, 2013



Jason A. Steinberger

Index Number:
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

**MANIROU MBAYE (AKA MOUNIR MBAYE) AND ISSATU DIALLO AS MOTHER
AND NATURAL GUARDIAN TO M [REDACTED] D [REDACTED] AN INFANT UNDER
EIGHTEEN (18) YEARS OF AGE**

Plaintiff

-against-

**CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT POLICE AND
NEW YORK CITY POLICE OFFICER HARRY PELL, SHIELD 7048 OF THE 44
POLICE PRECINCT**

Defendant.

SUMMONS and COMPLAINT

LAW OFFICES OF JASON A. STEINBERGER, LLC
505 Eighth Avenue
Suite 701
New York, NY 10018

To:
Attorney (s) for Defendant(s)

Service of a copy of the within _____ is hereby admitted.

Dated: _____
Attorney(s) for

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of
☐ entered in the office of the clerk of the within named Court on

**NOTICE
OF ENTRY**

☐ that an Order of which the within is a true copy will be presented for settlement to the Hon.
NOTICE OF _____
once of the Judges of the within named Court,

SETTLEMENT at _____
on _____ 200 , at _____ m.

Dated: _____
JASON A. STEINBERGER, ESQ.
505 Eighth Avenue
Suite 701
New York, NY 10018

To:
Attorney(s) for